



POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings :
-----X
- against - : FINAL
Sergeant Wanda Anthony : ORDER
Tax Registry No. 921922 : OF
Fleet Services Division : DISMISSAL
-----X

Sergeant Wanda Anthony, Tax Registry No. 921922, Shield No. 90, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2014-11756, as set forth on form P.D. 468-121, dated October 29, 2015, I find Respondent Guilty of Specifications Nos. 1-2 and 5-10 and Not Guilty of Specification No. 4. Specification No. 3 was dismissed.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Sergeant Wanda Anthony from the Police Service of the City of New York.

WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE: At 0001 Hrs on August 9, 2016



POLICE DEPARTMENT

June 23, 2016

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In the Matter of the Charges and Specifications : Case No.
- against - : 2014-11756
Sergeant Wanda Anthony :
Tax Registry No. 921922 :
Fleet Services Division :
-----X-----

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For Respondent: Thomas Kenniff & Valerie Mitchell, Esqs.
Raiser & Kenniff PC
87 Walker Street, 2nd Floor
New York, NY 10013

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, discharged her duty firearm without cause or police necessity.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, discharged her duty firearm striking and causing damage to the vehicle of Person A.

P.G. 203-05, Page 1, Paragraph 1 – PROHIBITED CONDUCT

3. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, fired one round from her duty firearm at Person A and Person B. (*Dismissed by Department before trial*)

P.G. 203-05, Page 1, Paragraphs 1 and 2 – PROHIBITED CONDUCT

4. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, having been involved in an incident where Sergeant Anthony discharged her firearm, failed to remain at the scene, and failed to promptly report the discharge to local police authorities and the Operations Unit.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

P.G. 212-29, Page 2, Note – FIREARMS DISCHARGE BY UMOS

5. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, failed to safeguard her duty firearm in that Sergeant Anthony had her firearm unholstered and in her purse.

P.G. 204-08, Page 2, Paragraphs 9 & 10 – FIREARMS

GENERAL REGULATIONS

6. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, wrongfully consumed an intoxicant to the extent that Sergeant Anthony was unfit for duty, and Sergeant Anthony was unfit for duty while armed.

P.G. 203-04, Page 1, Paragraph 2 & Additional Data – FITNESS FOR DUTY

7. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, wrongfully operated a motor vehicle while under the influence of an intoxicant.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

V.T.L. 1192 (3) – OPERATING A MOTOR VEHICLE UNDER THE
INFLUENCE OF ALCOHOL OR DRUGS

8. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, wrongfully operated a motor vehicle while her ability was impaired by an intoxicant.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

V.T.L. 1192 (1) – OPERATING A MOTOR VEHICLE UNDER THE
INFLUENCE OF ALCOHOL [OR DRUGS]

9. On or about September 10, 2015, Sergeant Wanda Anthony, during an official Department interview conducted pursuant to Patrol Guide 206-13, provided false and/or misleading statements to Department investigators regarding her consumption of alcoholic beverages on or about April 30, 2014. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

10. On or about April 30, 2014, Sergeant Wanda Anthony, assigned to the 122 Precinct, while off-duty in Watchung New Jersey, wrongfully refused to submit to a breathalyzer test. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before Court on March 9 and 10, 2016. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department called Patrolman Brian McLaughlin and Lieutenant William Kelly of the Borough of Watchung, New Jersey Police Department, and Sergeant Sammy Tong of the New York City Police Department, as witnesses. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty of Specification Nos. 1-2 and 5-10, and Not Guilty of Specification No. 4. Specification No. 3 was dismissed by the Department before trial.

FINDINGS AND ANALYSIS

It was undisputed that on the afternoon of April 29, 2014, around 1600 hours, Respondent met up with Person A at an Applebee's restaurant in Elizabeth, New Jersey. They previously had met each other at a nightclub in Manhattan about a week beforehand. After consuming food and drink at Applebee's, Respondent and Person A went to three additional

establishments. At one point during the day, Person A spoke on his cell phone to his former girlfriend, Person B. Respondent also spoke to Person B, and told her, in sum and substance, that Respondent was going "to fuck her man."

It was further undisputed that Respondent and Person A ended up at Person A's residence on [REDACTED] in Watchung, New Jersey, in the early morning hours of April 30, 2014. Person B was there waiting for them and struck Respondent several times. Respondent discharged one round from her service firearm, striking the rear of Person A's vehicle. She then drove away in her own vehicle, but was stopped less than a mile away by the Watchung Police Department (WPD) and arrested.

At issue is whether Respondent wrongfully fired her weapon at Person A's vehicle, and failed to remain at the scene and contact the Operations Unit. The Department's theory was that an angry and embarrassed Respondent shot at Person A's vehicle in revenge, after Person A and Person B had entered the house. Respondent asserted that she was firing in self-defense at the person or persons that attacked her. She also contended that she did not have time, in that dangerous situation, to remain at the scene and contact Operations.

The second issue is whether Respondent was intoxicated by the time she arrived at Person A's residence. This would mean that she was unfit for duty, armed while unfit for duty, and drove while intoxicated.¹ Respondent alleged that she was absolutely sober, had nothing alcoholic to drink during the entire course of events, and that any erratic behavior was due to her head injury. The responding WPD officers, and Person A, in statements to investigators, contradicted her statements about her level of intoxication. There also were restaurant receipts

¹ Respondent is charged with driving while intoxicated and while ability impaired under the good-order provision of the Patrol Guide, as well as the New York State Vehicle and Traffic Law. Because the incident took place in New Jersey, however, the VTL would not directly apply. The parties consented to the application of New York law concerning common law signs of intoxication (Tr. 354-56).

and surveillance video, which, according to the Department, indicated that Respondent did consume alcohol. The Department also alleged that Respondent wrongfully failed to submit to a breathalyzer test, which Respondent indicated she refused because she did not trust the local police.

Finally, the Department alleged that Respondent gave misleading answers concerning her consumption of alcohol during her official NYPD interview. Respondent asserted at trial that any inaccurate answers were the result of confusion and loss of memory.

Investigation by the Watchung Police Department

Patrolman Brian McLaughlin of the WPD testified that he responded after 0300 hours to the vicinity of [REDACTED] after a 911 call for shots fired. It truly was a dark and stormy night, as there were torrential downpours beginning on April 29 and continuing into April 30, 2014, and the area, though essentially suburban and residential, was heavily wooded. The suspect was said to be fleeing in a Cadillac. On the way to the residence, two to three minutes after the 911 call was made, McLaughlin saw the suspect vehicle and conducted a felony car stop on it, meaning that he ordered the driver out at gunpoint. Other officers responded as well. McLaughlin conceded that the driver, Respondent, stopped her vehicle within a reasonable amount of time and at a safe location. He asserted, however, that Respondent exited the car immediately and had to be told several times to get back inside. When she thereafter followed instructions to exit the vehicle, she was told to keep her hands up but kept dropping them to her sides. Respondent also was swaying and staggering as she walked backward, in platform heels. She was handcuffed and placed in McLaughlin's patrol car (Tr. 20-26, 36-42, 44-47, 57, 81-82, 89-95).

McLaughlin testified that Respondent identified herself to him as a police officer with the New York City Police Department. When he asked if she had her firearm with her, she stated

that it was in her purse inside the vehicle, but she did not shoot it. McLaughlin had not said anything to her at that point about a firearm discharge or what had occurred at [REDACTED] (Tr. 26-27, 37-38, 49-50, 69).

McLaughlin described Respondent inside the vehicle as crying, agitated and highly intoxicated. She had bloodshot eyes, was slurring her speech, using profanity, and he could smell alcoholic beverages coming from her, to such an extent that it definitely indicated intoxication. The intensity of the smell made McLaughlin conclude that it came from spirits. There was a plastic divider inside the patrol vehicle but it was not completely solid – there was a window within it. At times Respondent was no more than eight inches from McLaughlin's face. She admitted having two drinks, even though she first had denied drinking anything. She indicated to McLaughlin that she was his boss, she would not treat him the way he was treating her, and that he was "a piece of shit" (Tr. 27-30, 51-53, 56, 59).

Two-way dashboard camera footage from McLaughlin's vehicle captured the car stop and Respondent's actions in the back seat. Beginning around 0335 hours, Respondent stated that her head hurt, that she had been beat up and was fleeing from her attackers. McLaughlin told her that emergency medical technicians would meet her at the precinct, but she demanded to be taken directly to the hospital. When McLaughlin asked her for consent to search the vehicle, and she said, "I never searched my weapon," he asked if she had been drinking that night. She said no, but then admitted having two drinks at a pool hall and strip club. Respondent kept asking for the handcuffs to be taken off, even after McLaughlin explained that she knew he could not do that. She also kept interrupting him during his questioning of her about whether she would give consent. She was crying and yelling. She said that as a sergeant, to a subordinate officer like McLaughlin, she "got your back" no matter what, whether he was in the right or in the wrong. She noted that she would give an officer water to defeat the breathalyzer and would ensure he

did not remain in handcuffs. She would "take care of" other officers, but McLaughlin was "just evil." She continued to ask why she was under arrest, and added that she woke up on the ground, unconscious and hurt (Dept. Ex. 11, second video; Tr. 30-31, 66-70).

At headquarters, McLaughlin testified, Respondent's vehicle was impounded and she was detained. He did not consider her to have given valid consent to search, due to her intoxication. EMTs arrived at McLaughlin's direction and treated Respondent, but she declined to go to the hospital. McLaughlin testified that Respondent told the EMTs she had three drinks that evening. When McLaughlin tried to give Respondent the *Miranda* warnings, she responded with profanity and he deemed it an unsuccessful waiver of her rights. She also refused to take a breathalyzer test. When McLaughlin momentarily walked away from the processing area and left some paperwork on the desk, Respondent grabbed some of it, spit into it, and threw it in the garbage (Tr. 31-34, 69, 80, 83-84, 87, 91, 142).

McLaughlin testified that he observed Respondent's clothing to be wet along the left side. This included part of her shirt and her upper leg, thigh or hip area. The rest of her body and clothing was dry. There were no stains consistent with red wine or grape juice. McLaughlin agreed that Respondent had an injury to her left arm and a small abrasion to her eye. She did not appear to have any defensive wounds, or injuries to the outside of her hands, but did have dirt in the creases of her palms (Tr. 34-35, 55, 60-65, 82-83, 119-20, 147-48, 160-61; Dept. Ex. 10a, photograph of scarred abrasions to elbow; Ex. 10b, photograph of bruising under right eye; Ex. 10c, abrasion to inside of lower lip; Ex. 10d & g, outsides of hands; Exs. 10e & f, palms; Exs. 10h-j, body showing dirt stains on mid- to left side of Respondent's clothes, running from about hip to breast).

Video footage from the processing area, beginning around 0437 hours, showed Respondent talking to herself and weeping. She also appeared to look at her face in a mirrored

surface on the wall. She asked that a call be made to her command and reiterated that she was laying in the dirt, unconscious. When EMTs arrived around 15 minutes into the video, Respondent gave them detailed pedigree information. She described having injuries to her elbow, face and side. When the EMT asked if she wanted to go the hospital, she took a few seconds and answered that she was worried about falling asleep if she had a concussion. The EMT advised her that a visit to the hospital could determine if she had a concussion, not an examination by an EMT. The EMT also noted that it would be beneficial to be examined at the hospital if she had been unconscious. Eventually, Respondent dismissed the EMTs. During the recitation of the *Miranda* warnings, Respondent called McLaughlin a piece of shit, hoped that he would "fucking die," and told him "fuck you" when he asked her if she understood. She indicated that he was not a real officer, and that she never would have arrested an officer in these circumstances. She would have driven him or followed him home if he were intoxicated. Respondent was told to remain seated but she ignored this directive. She refused to take the breathalyzer test, on the grounds that she had been knocked unconscious, her head hurt, and she was not thinking clearly. She claimed that officers go out drinking every night and drive home, and that McLaughlin should know that. Still, she contended that she was not intoxicated. When McLaughlin refused to let Respondent go to the bathroom, she indicated that she would urinate in her pants or on the floor. She also spit into some of McLaughlin's paperwork and threw it in the garbage. She later continued to spit or expectorate into a garbage can (Dept. Ex. 12, first, second and fourth videos; Tr. 69).

McLaughlin conceded he did not relay Respondent's statements about being assaulted directly to the officers that responded to [REDACTED]. This was done back at headquarters. McLaughlin testified that Respondent asked him to contact the Operations Unit,

but he did not do this himself. After McLaughlin finished processing Respondent, he handed her off to Lieutenant William Kelly of the WPD (Tr. 36, 69-75, 87).

McLaughlin and Kelly stated that Person A, who worked in the promotions industry, had a reputation in Watchung as a "character." He was in his mid-30s but lived in a house owned by his father, a retired attorney, who also lived there. The WPD had been called to the residence on many occasions, as a result of very large parties his family held. Person A was the subject of a narcotics investigation in the past and his father recently was denied a handgun permit. Person A was uncooperative with some of the officers who responded to [REDACTED] on the morning in question (Tr. 65-66, 83, 163-66, 184-85).

Kelly interviewed Person A on the morning of the incident. Kelly testified that Person A told him he met up with Respondent at Applebee's around 1600 hours the previous day. There, they ate chicken sandwiches and drank sangria. The restaurant produced a record of a check (Ct. Ex. 1a), beginning at 1626 hours and ending at 1721 hours, showing one "App Sang Pit" for \$13.99, with two glasses, and two "Reg. Chx Caes" for \$10.99 each. Also produced was a credit card receipt signed at 1721 hours by Person A with a subtotal of \$39.57 (Ct. Ex. 1b). Video from Applebee's was consistent with this, according to Kelly (Tr. 99-102, 132, 151-58).

Kelly testified that Person A told him he and Respondent next went to a strip club called Lookers. There they drank double shots and Long Island Iced Tea. They returned to Person A's residence, dropped off Respondent's vehicle, and the two went in Person A's vehicle to pick up his cousin and a friend. According to Person A, the four of them proceeded to Hugo's, another bar. Kelly testified that video surveillance from Hugo's showed the four approaching the bartender, receiving beverages, and drinking them. Respondent on the video drank two beverages. According to Person A, the four next went to Glo, a nightclub, where, Person A said, both he and Respondent drank more alcoholic beverages. Person A stated that Respondent spent

\$150 on alcohol and was intoxicated by the end of the evening (Tr. 102-10, 150-51, 155, 158-59, 174-76, 185).

Person A then dropped off his cousin and the friend, and Person A and Respondent returned to [REDACTED]. Person A told Kelly that during the course of events that day and night, his erstwhile girlfriend, Person B, called him on his cell phone. Respondent picked up the phone and commented to Person B, in sum and substance, "I'm fucking your man tonight." Person B also confirmed this to Kelly. He did not notice any injuries on Person B (Tr. 108, 110-11, 131-33).

Person A told Kelly that when they arrived at his residence, Person B was waiting in the driveway. A fight started between Person B and Respondent. Person B told Kelly that it was a mutual altercation involving slapping and punching. It ended and all three individuals went inside the basement of the house, where the wine cellar was located. There, according to Person A, "things kind of cooled off." Person B, however, said that Respondent grabbed some bottles of wine and left abruptly. It was Person A that called 911 to report Respondent firing shots and damaging his vehicle. Kelly agreed that Person A first told a different officer that all three individuals were drinking together at the residence before the fight occurred (Tr. 108-09, 111-12, 134, 171-72, 179-80, 183, 186-87).

Kelly interviewed Respondent starting at approximately 0545 hours on April 30, 2014. After a waiver of her *Miranda* rights, Respondent confirmed to Kelly that she met Person A at Applebee's on April 29, 2014, a little after 1500 hours. They drank sangria and ate food, and she showed him her weapon in the parking lot. She said that they then went to Lookers, where she consumed two vodkas. And from there to Person A's home. There, upon immediately exiting her 2014 white Cadillac Escalade, she was "blindsided" by an unknown assailant. She lost consciousness and awoke not knowing what had happened. She got into her car and left. She did not mention bottles being thrown at her. Kelly was approximately two feet from Respondent

while they spoke and could smell alcohol emanating from her breath. He conceded that she had difficulty remembering the events (Tr. 114-16, 119-22, 132, 139-40, 160-61, 168-69, 176; Dept. Ex. 12, fourth video [portion of Resp't's statement]).

Kelly noted problems with Respondent's reported timeline. First, the video from Hugo's was at approximately 2100 hours. If she had arrived at Person A's residence from there, she still would have been laying on the ground unconscious anywhere from five to eight hours. Further, while Respondent's left side was wet, the rest of her body was dry. This was not consistent with hours of exposure during that cold and heavily rainy night. Nevertheless, another WPD officer, Peter Lavecchia, observed Respondent's vehicle and noted deep scratches consistent with being keyed (Tr. 117-19, 141-42, 147-48, 160, 172).

Kelly testified that Respondent denied firing her weapon. She became nervous, however, when he asked if she would take a gunshot residue test. She picked at her fingers and fingernails, and wiped her tears and her hands on her jeans. Kelly found this to be evasive in intent. She said that she would take the test after she could go to the bathroom and contact her union representative. Kelly allowed her to use the bathroom but refused then to allow her to take the test because she had washed her hands. A search warrant was obtained, and Respondent's unholstered firearm was found in a purse inside her vehicle. The holster was found inside the center console (Tr. 122-26, 161-62, 169, 191-92; Dept. Exs. 1 & 2, photographs).

Kelly contacted Respondent's precinct after she gave him the contact information. She was slurring her speech as she said this (Tr. 129-30; Dept. Ex. 12, fourth video).

Kelly testified that he responded to the scene at [REDACTED]. He observed broken bottles, possibly wine bottles, down the driveway from the parked cars. There were no stains on the driveway. There was a shell casing laying in the rut between paving stones on the driveway. There also was a bullet entrance hole in the rear driver side window of Person A's vehicle, an

SUV. Bullet fragments were recovered from inside Person A's vehicle that matched both the casing found on the driveway and Respondent's firearm. The casing also matched the firearm (Tr. 54-56, 116-17, 126-29, 148-50, 186; see Dept. Exs. 5-6, photographs of driveway; Ex. 7, photograph of shell casing; Ex. 8, photograph of Person A's vehicle; Ex. 9, Somerset County Prosecutor's Office ballistics analysis report).

Investigation by IAB

Sergeant Sammy Tong of the Internal Affairs Bureau performed part of the investigation by the NYPD into this incident. One aspect of the investigation was the official Department interview of Respondent, which took place on September 10, 2015 (criminal proceedings against Respondent were taking place during the interval). Respondent denied drinking any alcohol during the events of April 29 and 30, 2014. She claimed not to recall making statements to the WPD contradicting that (Tr. 194-96).

Tong stated that Respondent said in her interview the sangria she drank was "virgin sangria," i.e., no alcohol. In 2015, Tong spoke to a manager from the Applebee's in question, who stated that they did not make virgin sangria. If someone wanted that, they would be served fruit juice and that is what would be reflected on the receipt (Tr. 196-97, 200, 202-03, 216-17).

Respondent told Tong that she drank two glasses of water at Hugo's, where the black-and-white video showed Person A giving her two lowball glasses of translucent liquid. She finished both in quick succession (Tr. 203-06, 217).

Respondent denied firing her gun during the incident. When Tong confronted her with evidence to the contrary, she claimed not to remember. She agreed that she was in custody of her firearm the entire time. Subsequently, however, after agreeing that she told Person B over the phone she "was going to fuck [Person B's] man," Respondent said that she had a physical confrontation with Person B. Respondent exited her vehicle and was waylaid and fell to the ground.

She lost consciousness, only to wake up and find that someone was throwing wine bottles at her. When she got back up, Person B was still punching her. She took out her firearm because she felt threatened and fired one round in self-defense. Respondent indicated that she thought she had sustained a concussion, and that because of her head injury, she was having trouble remembering all the details (Tr. 197-99, 208-10, 214-15).

Tong interviewed Person A in August 2015 but described him as uncooperative. Ultimately, however, Person A wrote out a statement (Resp't's Ex. G). He admitted that Person B had attacked Respondent. Neither Person A nor Person B, whom Tong also interviewed, described Respondent pointing or firing her weapon at them. Person A wrote that after he broke up the fight between Person B and Respondent, he let Respondent use the bathroom in his house so she could clean up. The fight re-started when she came out, and he broke it up. According to Person A, Respondent grabbed some wine bottles and left. Both Person A and Person B told Tong that they were inside the house and heard shots (Tr. 212-13, 215-16).

Respondent's Testimony

Respondent had been a member of the Department for 17 ½ years and a sergeant for the last six and a half. She lived on Staten Island and was assigned to a command there. She first met Person A a few days before the incident in question at a nightclub in Manhattan. They agreed to meet in front of the movie theatre at a mall in Elizabeth, New Jersey. From there, around 1545 hours, they went to the nearby Applebee's. There, Respondent claimed, she had a salad with grilled chicken and "virgin sangria," i.e., fruit punch. She claimed that they actually were served a half-pitcher. She denied drinking any alcohol there or before they met up that day (Tr. 226-27, 229, 259, 276-77, 291-94).

Respondent testified that after Applebee's, she said she wanted to play pool. Person A told her that the only billiards he knew of was at a strip club, Lookers. Respondent indicated to

Person A that she had her firearm with her, but he told her he did not think Lookers had metal detectors. Person A asked if he could see her gun and she acquiesced. They went to Lookers around 1830 hours and stayed until 2030 or 2100. She had French fries and water, but unlike Person A, she did not drink anything alcoholic. Before going to another place Person A thought of to play pool, Hugo's, Respondent dropped off her car at Person A residence and got into his vehicle because it was dark and rainy and she did not know the area. They also picked up Person A's cousin and two friends. Respondent stated that her group only stayed at Hugo's a short time because there were a number of people already waiting to play pool. She only drank water at Hugo's. They then went to Glo, where she also abstained (Tr. 231-35, 259-62).

Respondent testified that Person A's ex-girlfriend, Person B, kept calling and texting him during the evening. As they were dropping off the cousin and friends, Person A handed the phone to Respondent, who said hello. Person B began calling her a "stupid bitch." Respondent told Person B, "I'm getting ready to fuck your man" (Tr. 235, 260-63).

After dropping off the others, at around 0200 hours Respondent and Person A returned to his residence and parked in the driveway. When Respondent got out of the car, she testified, she was hit in the back of the head and fell into dirt on the ground. While Respondent was on her hands and knees, her assailant kicked, punched and dragged her. She lost consciousness and the next thing she could recall was laying on the ground. She sustained a black eye, a cut inside her lip and three knots on her head. Some of her hair was pulled out as well (Tr. 235-39, 263-64, 267-70; Resp't's Ex. A, photograph of hair and scalp).

Respondent believed at that moment Person A and the other men had conspired to attack her at the end of the night. She thought that she was going to be raped and killed. She was being hit with bottles when she woke up and there was glass on the ground. She might have been laying within the broken bottles, but admitted that she was not injured by them. There were no

stains on her clothes consistent with red wine or grape juice. She sat up and was being punched. She reached into her bag, took out the gun, and pointed it. Respondent claimed, however, that the next thing she remembered was standing up and a person running toward the house. She found her vehicle but it was hard for her to move her legs. She eventually got there and drove away. She never entered the house and claimed not to remember firing her gun. After Respondent was released from custody, she noticed significant keying damage to her vehicle, which she had leased only a little over a month before the incident (Tr. 239-41, 250-52, 254-56, 264-70, 281-83, 286-87, 294-96; Resp't's Ex. B, insurance estimate of \$4,831.40; Ex. E, vehicle financing papers).

Respondent asserted that she did not call 911 due to the trauma of the situation. She nevertheless stated that when she was pulled over by the police, she thought it was because the other individuals said she had a gun. Still, she got out of her vehicle immediately because she thought that the police were there to help her (Tr. 241-42).

Respondent thought while in McLaughlin's vehicle that she might have lost consciousness and had a concussion, and that was part of why she asked him for medical attention. Respondent contended that she declined the EMTs' offer to take her to the hospital because she knew it would mean a longer stay in custody (Tr. 243-44, 270-71, 296-97).

Respondent denied that she was intoxicated. Her statement to the EMTs and Kelly of having had alcohol to drink were untrue. She indicated at trial that she was not thinking clearly and did not even know what day it was. She added that she was confused because she "had been drinking like prior, the day before" (Tr. 242, 244, 249).

Respondent said she cursed at McLaughlin because she was upset that he was not responsive to her complaints of being assaulted and her assurance she was a police officer. She felt that he was agitating her by telling her she was intoxicated. Respondent regretted her

unprofessional speech and later apologized to McLaughlin. She still felt that she was discriminated against because she was a black woman, however (Tr. 245-47, 276-77, 279).

Respondent testified that her whole body was in pain. Her eye was throbbing and she had blurred vision. She picked up a piece of paper that she did not think McLaughlin needed and spit into it to see if her lip was bleeding. She then threw it in the garbage (Tr. 247-48, 279).

Respondent indicated that she refused to take a breathalyzer test because the police were not listening to her or letting her call the NYPD. She did not trust the WPD and wanted her delegate. She conceded that it would have taken her delegate 45 minutes to an hour to get to Watchung. Respondent also told Kelly that she would take the test if he called Operations for her (Tr. 245, 247-49, 279-80, 289-90, 292-93).

Respondent went to her doctor after the incident. She was having nerve issues and a bulge on her neck was found. She was transported by ambulance to the hospital. At the emergency room, she was diagnosed with a herniated disc, muscle spasms, and facial contusions. A CT scan of her head was negative. She admitted stating during a triage interview that she was unsure whether she lost consciousness. She was prescribed ibuprofen and muscle relaxants (Tr. 237, 252-54, 271-75; Resp't's Exs. C & D, hospital records).

Intoxication

The evidence as a whole, both Respondent's behavior as recorded by witnesses and surveillance video, and receipts and video from various establishments, overwhelming proved that Respondent was intoxicated on the night in question.

The first restaurant that Respondent and Person A attended was Applebee's. Respondent told Kelly, the WPD investigator, that she had sangria there. The receipts from Applebee's indicate that a pitcher of sangria and two glasses were served to Respondent and Person A, with the sangria costing \$13.99. Person A also told Kelly that they had sangria.

It was not until Tong, the IAB investigator, interviewed Respondent that she claimed this beverage was "virgin sangria." A follow-up interview with a manager from that Applebee's, however, revealed that the restaurant did not serve such a thing. In fact, the manager stated that if a customer wanted virgin sangria, she would be served fruit juice.

To counter this, the defense introduced a Yahoo! Answers forum question from no later than March 10, 2014, seeking a recipe for the virgin sangria the questioner had ordered at Applebee's (Resp't's Ex. F). The drink she was served was pale, pinkish or peach in color and had several pieces of fruit in it. She did not think it had cranberry juice, but that was what she was charged for.

The person that answered gave a recipe including soda, several juices and pieces of fruit. He cautioned, however, that "[t]echnically it is nothing more than fruit punch." In fact, he "would not call it sangria. It would be like calling water virgin milk."

The real question thus is not whether it is possible for someone to order virgin sangria at Applebee's and be served the closest equivalent, fruit punch. In fact, the manager indicated this was possible. The real question is whether not just one but two people would actually tell a waiter they wanted a pitcher of virgin sangria, pay \$13.99 for it (despite Respondent's testimony, the receipt indicated that it was a pitcher and not a half-pitcher), and still have it be listed on the receipt as sangria and not fruit juice as the manager said it would be reflected. The Court finds this unlikely. Moreover, Respondent told Kelly, at a time when she knew he was trying determine how much alcohol she had drunk, merely that it was sangria. It was only over 16 months later that she told Tong the sangria was alcohol-free. Finally, Person A's statement that they had sangria and chicken sandwiches was corroborated by the receipts kept by Applebee's. This indicates that his further statements about Respondent drinking throughout the night, including double shots and Long Island Iced Tea at Lookers, were credible.

The other objective evidence of alcohol consumption was from Hugo's. Black-and-white video showed Respondent drinking two lowball glasses of translucent liquid in quick succession, or chugging them. Contrary to Respondent's assertion, this was consistent with an alcoholic beverage and inconsistent with water. The fact that the video did not show anyone paying for the beverages does not indicate that they were complimentary. There was no evidence that the video captured every possible interaction between the group and the bartenders. In any event, this was a date between Person A and Respondent. It is undisputed that Person A paid the Applebee's tab, and he handed her the Hugo's drinks, so the lack of video showing Respondent paying for something should not be unexpected.

In one sense, this is a tempest in a teapot: the events at Hugo's and Applebee's took place hours before the shooting, and Respondent could have been sober by then even having had two cocktails and perhaps half a pitcher of diluted wine. Rather, the incidents, and Respondent's attempts to explain them away, show her lack of credibility about having been completely sober during the course of the evening.

It was undisputed that after being taken into custody, Respondent was acting in a way that one would not expect a police officer to act. At trial, she attributed this to being attacked and having a head injury. Of course, a person can have both a head injury and be intoxicated. Viewed as a whole, however, Respondent's demeanor was more consistent with intoxication than with anything else.

McLaughlin's testimony that he could smell the odor of alcoholic beverages on Respondent's breath while seated less than a foot away from her in the vehicle, and Kelly's similar testimony, was corroborated by her behavior on the video. Respondent was alternatively weepy and angry on the videos both in McLaughlin's vehicle and with McLaughlin at the WPD command, to such an extent that a head injury could not account for it. A head injury does not

explain why she continuously called McLaughlin a piece of shit and hoped he would die. The most striking moment was when Respondent told McLaughlin that if she was on duty and encountered a fellow officer who might be drunk, she would "take care of" him by driving him home and giving him water to sober up. There would have been no reason for her to give this frank admission of planned corruption if she was not herself intoxicated.

Furthermore, Respondent became much more cooperative with Kelly than she was with McLaughlin. Toward the end of her interaction with McLaughlin, she claimed not to remember her date of birth. With Kelly, only about a half hour later, she could recite the phone number to her command. If she was sobering up and no longer dealing with someone with whom she seemed to clash, this makes sense. If her head injury was accounting for her confusion, it makes no sense that she no longer was confused when talking to Kelly.

Finally, the evidence that Respondent suffered a serious head injury, as opposed to momentary disorientation from being in a fight, is lacking. She told both McLaughlin and the EMTs that she thought she had a concussion. In fact, she was so worried about this that she told the EMTs she was concerned about falling asleep if she was concussed. If she was so injured to be concerned about the serious consequences of an untreated concussion, the prospect of an extended stay in custody to be treated should not have been an impediment. Most importantly, the medical records show no evidence of a serious head injury.

In sum, the Department proved it was more likely than not that Respondent was intoxicated at the time she fired the shot into PersonA's vehicle. Therefore, she is found Guilty of Specification Nos. 6 (being unfit for duty and unfit for duty while armed), 7 (driving while intoxicated), 8 (driving while ability impaired), and 9 (giving false and misleading statements about her consumption of alcoholic beverages during her official NYPD interview).

Firearm Discharge

It was undisputed that Respondent fired her weapon outside Person A's residence at approximately 0300 hours on April 30, 2014. Respondent asserted that she acted in self-defense after being attacked. The Department argued that she was angry and intoxicated after being attacked, but the fight had ended, and on her way off from Person A's residence, she took revenge by firing at his vehicle.

The evidence overwhelmingly proved that Respondent's action was not justified. The objective evidence disproved her account. She indicated that after being attacked, she lost consciousness because she woke up at a certain point. As the Department pointed out, however, it was cold and pouring rain that night. Even if she had been laying on the ground for a minute, she should have been soaked. Instead, only one side of her clothing was wet or dirty. This corroborates the assertion of the Department based on the accounts of Person A and Person B: there was a relatively brief altercation, one in which Respondent was either thrown or fell to the ground.

Because of this, the Court does not credit Respondent's account that she was lying unconscious, woke up, and still was being attacked, by having wine bottles thrown at her and being punched. Even if the wine was white, she still should have been injured by the bottles themselves and the broken glass.

Respondent also displayed consciousness of guilt by originally denying that she fired her weapon. She denied this to McLaughlin, did not mention it to Kelly, and only told Tong that she did not remember firing when he confronted her with evidence that she did fire. In fact, when McLaughlin asked Respondent if she had her firearm, she said that it was in her purse but she did not shoot it. McLaughlin had not mentioned anything about a shooting at that point. Other than to lie, Respondent had no reason to mention this. The tribunal rejects Respondent's argument

that she must have known, from the felony stop, that she was being pulled over for something serious (Tr. 38). This does not explain why she would have thought it had anything to do with an alleged firearms discharge. Finally, the Court credits Kelly's testimony that Respondent got visibly nervous when he asked her to take a gunshot residue test, and tried to remove evidence by picking at her fingernails.

Furthermore, Respondent testified at trial that she reached into her bag, took out the gun, and pointed it. Respondent claimed, however, that the next thing she remembered was standing up and a person running toward the house. In other words, she forgot actually shooting the weapon, allowing her to plausibly claim that she was not being untruthful when she denied shooting it. The problem is that this is not plausible. There was no evidence that any head injury could have allowed Respondent to remember everything except actually firing the gun.

Finally, Person A called 911 to report that Respondent fired shots and damaged his vehicle. He did not say that she shot the weapon at him or Person B. Person A was calling for police assistance, so one would expect him to say exactly what occurred. One would especially expect a person calling for assistance to mention the most serious crime that had occurred; attempted murder is more serious than criminal mischief. Person A had no reason to protect Respondent at that point, and if he wanted to conceal Person B's assault on Respondent, calling the police would not have helped.

In sum, the Department proved by a preponderance of the evidence that Respondent discharged her firearm without police necessity (Specification No. 1), and that when she discharged her firearm, she struck and caused damage to Person A's vehicle (Specification No. 2). Furthermore, there was no reason for Respondent not to re-holster her weapon. Instead, she placed the firearm, unholstered, in her purse, and put the holster in the center console (Specification No. 5). Therefore, she is found Guilty of these specifications.

The Court finds Respondent Not Guilty of failing to remain at the scene and promptly report the firearm discharge to the WPD and the NYPD Operations Unit (Specification No. 4). This specification really only makes sense if the tribunal had credited Respondent's account of engaging in a justified firearm discharge. A police officer who engages in a justified shooting should be expected to remain at the scene. Here, Respondent had just wrongfully shot at the vehicle of the man with whom she had been on a date, after his ex-girlfriend showed up and assaulted her. To require her to remain at the scene while calling 911 and the Operations Unit strains the notification rule to the point of incredulity. In any event, it is undisputed that after being taken into custody, Respondent promptly asked that WPD officers contact the NYPD.

Breathalyzer Test Refusal

It is undisputed that Respondent refused the WPD directive to take a breathalyzer test. She claimed at trial that she did not trust the WPD, as they were not listening to her statement that she had been attacked, and were not letting her contact the NYPD. She also wanted her delegate to be present.

Respondent "not trusting" the officers cannot be allowed as an excuse not to take the breathalyzer. Few would expect arrestees to make quick friends with the officers that arrested them. There was no proof that the WPD mistreated Respondent or tampered with evidence. She simply disagreed with the course of their investigation. Furthermore, toward the end of the video with Kelly, Respondent appeared to be getting more sober. It was undisputed that it would have taken her delegate 45 minutes to an hour to get from Staten Island to Watchung, giving her even more time to defeat the test. In light of these facts, the Court judges Respondent's arguments unpersuasive and she is found Guilty of Specification No. 10.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined.

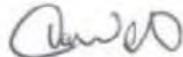
See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on August 31, 1998. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The tribunal also is in possession of several documents submitted by Respondent on penalty. This includes information about her family, educational background, work history, hobbies, the alternative sentencing program she attended as a result of the criminal charges in this incident, and supportive letters from family and friends.

Respondent's action in this case appears to be an aberration on her otherwise fine career. Nevertheless, it was an extremely serious incident. Respondent, while intoxicated and seeking revenge after being embarrassed and spurned, shot at the vehicle of the man with whom she just had been on a date. This could have caused serious physical injury or death. All the more so this could have occurred in Respondent's drunken state. She only compounded her misconduct in this regard by refusing to take a breathalyzer test and lying to investigators about her level of intoxication.

Similar cases have resulted in penalties of termination from the Department. See Case Nos. 2014-11803 & 2015-13923 (Apr. 14, 2016), pp. 5, 8 (termination for five-year police officer with no prior disciplinary history who fired six rounds next to his apartment building under several balconies for no reason other than anger; officer also sent threatening text message to [REDACTED]); Case Nos. 83211/07 & 85135/09 (May 17, 2011) (nine-year police officer with no prior record dismissed for recklessly creating risk of injury by firing his gun in direction of his [REDACTED], failing to report the incident to the Department, and abusing sick leave and lying about it), aff'd Matter of Amador v. Kelly, 109 A.D.3d 762 (1st Dept. 2013) (penalty

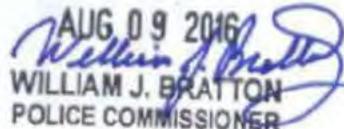
not shocking to court's sense of fairness). Accordingly, it is recommended that Respondent be **DISMISSED** from the Department.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

AUG 09 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT WANDA ANTHONY
TAX REGISTRY NO. 921922
DISCIPLINARY CASE NO. 2014-11756

In her last three yearly performance evaluations Respondent received a 3.0 "Competent."

Respondent was suspended from duty between April 30, 2014, and November 2, 2014, in regard to the underlying charges in the present disciplinary case. After being relieved from suspended duty status, Respondent was placed on modified duty status, which remains ongoing.

For your consideration.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials